IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ANDREW P., et al., Plaintiffs	:	CIVIL ACTION
v.	:	
BUCKS COUNTY INTERMEDIATE UNIT, et al., Defendants		NO. 99-5255

MEMORANDUM AND ORDER

McLaughlin, J. December 10, 2001

This dispute arises out of the referral, evaluation and provision of special educational services to Andrew P., a developmentally delayed student protected by the provisions of the Individuals with Disabilities Education Act ("IDEA"). Before the Court is Defendants' Motion to Dismiss Plaintiffs' Complaint in its entirety. The Court will deny the Motion in part and grant the Motion in part.

The main question presented by the Motion is whether a settlement agreement entered into by the parties in connection with the administrative proceeding bars this action for monetary damages under 42 U.S.C. § 1983 for violation of the IDEA. The Court holds that, under the teaching of W.B. v. Matula, 67 F.3d 467 (3d Cir. 1995), it does not. The Court will, however, grant the Motion without prejudice with respect to the individual

defendants in their individual capacities on the ground of qualified immunity. The Complaint fails to state how the individual defendants were directly involved in, or had actual knowledge of, the alleged violations. Plaintiffs may file an amended complaint.

Andrew P. is an eight year old child with developmental delays who resides within the boundaries of the Bucks County Intermediate Unit #22 (the "BCIU").[1] The BCIU is the local educational agency charged with providing early intervention services to eligible young children with disabilities, through a contract with the Commonwealth of Pennsylvania.

In October 1995, Andrew's parents referred him to the BCIU for an evaluation to determine his eligibility for early intervention services. The BCIU performed some initial screening, and determined that Andrew had weaknesses in all developmental areas. Although the BCIU was required to develop

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[1] These facts are taken from the Complaint, unless otherwise noted. The Complaint will be dismissed under Rule 12(b)(6) of the Federal Rules of Civil Procedure only if, after taking all well-pleaded allegations as true and construing the Complaint in the light most favorable to Plaintiffs, the Court determines that under no reasonable reading of the pleadings could the Plaintiffs be entitled to relief. See In *re* Burlington Coat Factory Sec. Litig., **114** F.3d 1410, **1420** (3d Cir. **1997);** Colburn v. Upper Darby Township, 838 F.2d 663, **665** (3d Cir. **1988).**

and implement an appropriate program of early intervention services in accordance with specific procedures mandated by the IDEA, certain of these procedures were not adhered to.

In May 1997, Andrew's parents filed a complaint with the Commonwealth of Pennsylvania Department of Education Bureau of Special Education Division of Compliance. The complaint outlined thirteen violations of Andrew's rights in the provision of an early intervention program.[2] On July 11, 1997, Chet Pilgrim, a Special Education Advisor for the Bureau of Special Education, issued a report finding the complaints pertaining to these procedural errors to be valid. This report directed that a conference be held to develop an appropriate Individualized Education Program ("IEP") for Andrew.

After the parties were unable to agree on an appropriate IEP for Andrew, Andrew's parents requested an administrative due process hearing before a Pennsylvania Special Education Hearing Officer to address the issue of compensatory education.[3] The due process hearing took place before Hearing

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[2] The complaint alleged (among other things) that: the BCIU failed to provide evaluation following parent request; the BCIU failed to develop an Individualized Education Program ("IEP") within the appropriate timelines; and, the BCIU failed to provide prior notice pertaining to program and placement decisions.

[3] Compensatory education is an award of certain educational

(continued..)

Officer Barry Θ. Smith on July 31, 1997. At that hearing, Andrew's parents and the BCIU agreed to a plan of compensatory education and adopted an IEP for Andrew. This agreement was memorialized on October 25, 1997.[4] The agreement indicated that it settled completely "all compensatory education demands and claims made by the parents in this proceeding."

On October 22, 1999, Plaintiffs filed the instant Complaint, which is brought under the IDEA (20 U.S.C. § 1400 et *seq.)*, § 504 of the Rehabilitation Act (29 U.S.C. § 794), Title II of the Americans with Disabilities Act (42 U.S.C. § 12101, et *seq.)*, and 42 U.S.C. § 1983. The Complaint, as originally filed, was stated in broad terms, and sought remedies including compensatory education and other services, as well as monetary damages. Plaintiffs have subsequently made it clear that their Complaint is limited solely to a claim for monetary damages for the delay in providing Andrew a free appropriate public education for the period between October, 1995 and October, 1997. See

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[3](...continued)
services that is intended to redress a previous deprivation of educational services to which a child was entitled. E.g., M.C. v. Central Reg'l Sch. Dist., 81 F.3d 389, 395 (3d Cir. 1996); David P. v. Lower Merion Sch. Dist., No. Civ. A. 98-1856, 1998 WL 720819, at *4 (E.D. Pa. Sept. 18, 1998).

[4] Whether this IEP was properly implemented was the subject of further administrative hearings between the parties before Hearing Officer Dr. Linda Valentini in 1998 and 1999. That dispute is not a subject of the present Complaint.

Letter Dated 10/9/01, Docket #14.[5]

Defendants have moved to dismiss the Complaint, arguing that Plaintiffs have failed to exhaust their administrative remedies, and that the October 1997 settlement agreement waived the right of Plaintiffs to pursue the instant action. Defendants also argue that the doctrines of equitable waiver and administrative claim preclusion bar the Plaintiffs' claims. Finally, Defendants assert that the claims against the individual defendants in their individual capacities should be dismissed under the doctrine of qualified immunity.

Because it is jurisdictional in nature, the Court will first consider the issue of administrative exhaustion. See W.B. v. Matula, 67 F.3d 484, 493 (3d Cir. 1995). Generally, under the IDEA, plaintiffs must exhaust their administrative remedies before proceeding with a civil action in federal court. 20 U.S.C. § 1415(f) (1994); Matula, 67 F.3d at 495. However, this exhaustion requirement is, by its very terms, limited to claims where plaintiffs are seeking relief that is also available under the IDEA. 20 U.S.C. § 1415(f) ("before the filing of a civil action under such laws seeking relief that is ***also available*** *under this subchapter*") (emphasis added).

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[5] As discussed more fully at length herein, this limitation moots several of Defendants' arguments.

Plaintiffs have made it clear that they are seeking monetary damages under § 1983 for the alleged IDEA violations during the time-period from October, 1995 through October, 1997.[6] Because monetary damages are unavailable in IDEA administrative proceedings, further recourse to such proceedings would be futile, and the exhaustion requirement does not bar Plaintiffs' claim. E.g., Matula, 67 F.3d at 496; Ronald D. v. Titusville Area Sch. Dist., 159 F. Supp.2d 857, 862 (W.D. Pa. 2001); O.F. v. Chester Upland Sch. Dist., No. Civ. A. 00-779, 2000 WL 424276, at *2 (E.D. Pa. Apr. 19, 2000); J.F. v. Sch. Dist. of Phila., No. Civ. A. 98-1793, 2000 WL 361866, at **6-7 (E.D. Pa. Apr. 7, 2000); Jeffery Y. v. St. Marys Area Sch. Dist., 967 F. Supp. 852, 855 (W.D. Pa. 1997).

In order to determine whether the settlement agreement reached by the parties in October, 1997 waived Plaintiffs' rights to bring the instant action, the Court must apply the heightened standard for a waiver of civil rights claims rather than traditional contract principles. Matula, 67 F.3d at 497-98.

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[6] The Third Circuit, in W.B. v. Matula, 67 F.3d 467, 496 (3d Cir. 1995), held, in a case similar to the one at hand, that IDEA violations could serve as an underlying basis for bringing a § 1983 action to recover monetary damages in federal court. The Matula decision is also dispositive of other issues presented by the instant Motion, and is therefore cited extensively in this Memorandum.

This requires consideration of the totality of the circumstances surrounding the execution of the agreement, and any waiver of civil rights claims will not be enforced unless its execution was knowing and voluntary. Id. Factors weighing on the totality of the circumstances include whether (1) the language of the agreement was clear and specific; (2) the consideration given in exchange for the wavier exceeded the relief to which the signer was already entitled by law; (3) the signer was represented by counsel; (4) the signer received an adequate explanation of the document; (5) the signer had time to reflect upon it; and, (6) the signer understood its nature and scope. Matula, 67 F.3d at 497 (citing Cirillo v. Arco Chem. Co., Div. of Atlantic Richfield Co., 862 F.2d 448, 451 (3d Cir. 1988) & Coventry v. U.S. Steel Corp., 856 F.2d 514, 523 (3d Cir. 1988)).

In this case, consideration of these factors counsels against finding a knowing and voluntary waiver by Plaintiffs of their right to bring the instant claim. Looking first to the language of the agreement, it cannot be said that the agreement contains a clear and specific waiver of any damage claims. The agreement makes no specific mention of damages or civil rights claims, instead indicating that it settled completely "all compensatory education demands and claims made by the parents in this proceeding" -- namely claims for compensatory education.

See Matula, 67 F.3d at 498.

Further, reference to the transcript of the July 31, 1997 hearing where the settlement was negotiated does not reveal any clear statement that Plaintiffs intended to give up their right to pursue damages through civil rights claims. Rather, the testimony indicates that the agreement settled all "compensatory education demands and claims made by the parents in these proceedings," and that it settled "all claims in this hearing." The Court finds that the language of the agreement is not clear and specific in waiving Plaintiffs' rights to pursue the present claim, especially because a claim for monetary damages could not have been brought in the administrative proceeding at which the agreement was reached. See, Matula, 67 F.3d at 498 (noting that similar language was "at best ambiguous as to damages").

As part of the settlement agreement, the Plaintiffs were given a comprehensive award of compensatory education that went beyond the minimum requirements imposed by the IDEA. This compensatory education included extra occupational therapy and the provision of an part-time aide to assist Plaintiffs in their home. Further, the agreement provided that Plaintiffs would be reimbursed for tuition expended to place Andrew in a preschool during 1996 and 1997, and reimbursement for transportation expenses to the preschool. The consideration for this agreement

went beyond the bare minimum required by the IDEA, thus, the second factor favors Defendants.

Although Plaintiffs were not represented by counsel at the time they entered into the agreement, Defendants argue that because Plaintiffs later retained counsel who had the opportunity to revisit Hearing Officer Smith's 1997 decision, the third factor favors the finding of a knowing waiver by Plaintiffs. Having the opportunity to later revisit with counsel the 1997 decision does not, however, speak to whether the Plaintiffs, in the settlement agreement, knowingly waived their rights to pursue damages in a civil rights action. Had Plaintiffs been advised by counsel of their rights before entering into the agreement, and had they then decided to waive their rights to turn to federal court to seek damages, then the settlement agreement would arguably have more breadth. Later representation by counsel cannot cure the fact that at the time they entered into the agreement, Plaintiffs were not advised of their rights, nor cautioned by counsel that the settlement agreement might preclude future recourse to federal court.

Without being represented by counsel, Plaintiffs entered into the settlement agreement, which by its terms waived all claims made by parents "in this proceeding." Because a claim for damages was not raised (indeed, could not have been raised)

in the due process proceeding, it has not been shown that Plaintiffs understood that the scope of the waiver in the settlement agreement encompassed civil rights claims for damages. Even though the transcript reveals that Plaintiffs received an adequate explanation of the document, and Plaintiffs had two months from the date of the hearing to the date the agreement was finalized to reflect upon it, it cannot be said that the Plaintiffs clearly understood the waiver to be as expansive as Defendants assert.

The Court finds that, in consideration of the totality of the circumstances, the October 25, 1997 settlement agreement does not constitute a knowing and voluntary waiver the Plaintiffs' rights to pursue future civil rights claims for damages in federal court. For that reason, Plaintiffs are not precluded from bringing the instant claim for damages for the time-period covered by the agreement.

In their brief, Defendants argue that Plaintiffs' claims for compensatory education from October, 1995 through October, 1997 are barred by the doctrine of administrative claim preclusion. Because the Plaintiffs have clarified that their claim does not seek compensatory education, but only monetary damages, which are not available in administrative proceedings, administrative claim preclusion does not serve as a bar to

Plaintiffs' claim. See, e.g., Drinker v. Colonial Sch. Dist., et al., 888 F. Supp. 674, 679 (E.D. Pa. 1995) (noting that doctrine seeks to preserve administrative decisions where eligible claims or objections were not raised in those proceedings) (citing 4 Kenneth C. Davis, Administrative Law Treatise, § 26:7, at 441 (2d ed. 1983)).

Likewise, Defendants' argument that Plaintiffs' claim is barred by the applicable equitable limitations period also fails.[7] The equitable limitations period applies properly to plaintiffs seeking equitable remedies, such as tuition reimbursement and compensatory education, that are available in due process proceedings and on administrative review. It does not apply, however, to bar claims for monetary damages, which are not equitable in nature, and are unavailable in administrative proceedings. See Jeremy H. v. Mount Lebanon Sch. Dist., 95 F.3d

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[7] Although Defendants do not raise the issue of Statute of Limitations, it appears that the Complaint in this action was filed within the limitations period that governs § 1983 actions for money damages under the IDEA. E.g., Jeremy H. v. Mount Lebanon Sch. Dist., 95 F.3d 272, 280-281 (3d Cir. 1996) (approving application of two-year limitations period and holding that it begins to run once administrative decision is issued); McKellar v. Commonwealth of Pennsylvania Dept. of Educ., No. Civ. A. **98-4161, 1999** WL **124381,** at *4 (E.D. Pa. Feb. 23, 1999) (recognizing two-year statute of limitations, and noting that it is tolled for minors until they reach the age of 18); Jeffery Y. v. St. Marys Area Sch. Dist., **967** F. Supp. **852,** 855 (W.D. Pa. 1997) (same).

272, 280 n.16 (3d Cir. 1996) (recognizing an equitable standard requiring that "parents invoke their ***administrative remedies*** within a reasonable time") (emphasis added).

The rationale behind the equitable limitations period is that allowing plaintiffs to delay recourse to administrative action prejudices school districts who are not given timely opportunity to modify a student's educational program or to evaluate a parent's claim for reimbursement for expenses incurred in providing education outside the district. See Bernardsville Bd. of Educ. v. J.H., 42 F.3d 149, 157-158 (3d Cir. 1994). This rationale does not, however, support barring a claim for monetary damages, which could not have been addressed by administrative proceedings even had they been initiated at an earlier point in time.

Finally, Defendants argue that the claims against the individual defendants in their individual capacities should be dismissed under the doctrine of qualified immunity.[8] The doctrine of qualified immunity may be raised by school officials who have allegedly violated the IDEA. Matula, 67 F.3d at 499.

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[8] The individual defendants are William Vantine, former Executive Director of the BICU, Richard Coe, Executive Director of the BICU and former Director of Special Education Programs for the BICU, and James Coyle, Director of Early Intervention Programs for the BICU.

The doctrine, however, only shields officials acting in their individual capacities, as the claims against the individuals in their official capacities are equivalent to claims against the government entity (the BCIU) itself, and may not be defended on the basis of qualified immunity. Id. (citing Brandon v. Holt, 469 U.S. 464, 472-73 (1985)).

Under the doctrine of qualified immunity, defendants will not be liable if "their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982); Matula, 67 F.3d 484. The Third Circuit has concluded that the IDEA confers upon disabled students an enforceable substantive right to public education. Matula, 67 F.3d at 499. This right aligns with a corresponding duty upon school officials to identify and evaluate eligible children within a reasonable time. Id., at 501. School officials who violate this reasonable time requirement cannot be protected by the doctrine of qualified immunity. Id. Likewise, disabled children and their parents have a right to the procedural due process provided by the statutory procedures in the IDEA, and unreasonable violations of those procedures, and the attendant duty of school officials to carry out those procedures, cannot be protected by qualified immunity.

In order to defeat a claim of qualified immunity, however, a plaintiff must demonstrate that "the particular actions taken by defendants" were impermissible under established law at the time. Id., at 500 (adopting the reasoning of P.C. v. McLaughlin, 913 F.2d 1033, 1040 (2d Cir. 1990)). In this case, the Complaint is devoid of allegations regarding the specific actions taken by the individual defendants. It simply states that the defendants 'knew or should have known by virtue of direct participation" that the BCIU had failed to meet the procedural requirements and timelines required by the IDEA.[9] Complaint, ¶¶ **8-9**.

Although Rule 8 of the Federal Rules of Civil Procedure has established a notice-pleading system for the federal courts, a civil rights complaint in the Third Circuit must allege with appropriate particularity the personal involvement of the individual defendants.[10] See Rode v. Dellarciprete, 845 F.2d

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[9] The Complaint makes these allegations only for defendants Vantine and Coe. In their brief, Plaintiffs indicate that they will amend their Complaint to add allegations with regards to defendant Coyle.

[10] The Court is aware that the Supreme Court, in Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit, 507 U.S. 163 (1993), held that complaints in § **1983** actions were not subject to heightened pleading standards. The Court did not, however, consider "whether **our qualified immunity jurisprudence** would require a heightened pleading in cases involving individual government officials." 507 U.S. at 166-67. Courts have,

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1195, 1207 (3d Cir. 1988). This requirement can be met by allegations of personal direction or of actual knowledge and acquiescence, so long as these allegations are made with appropriate particularity. Id.

In this case, the allegations in the Complaint fail to assert how the individual defendants were directly involved in the alleged violations, or that the individual defendants had actual knowledge of the violations, yet acquiesced in them. For that reason, the claims against the individual defendants in their individual capacities will be dismissed. See, e.g., Burke v. Dark, No. Civ. A. 00-5773, 2001 WL 238518 (E.D. Pa. Mar. 8, 2001); Cropps III v. Chester County Prison, No. Civ. A. 00-182, 2001 WL 45762 (E.D. Pa. Jan. 19, 2001); Davis v. Wisen, Civ. A. No. 95-0137, 1995 WL 422790 (E.D.Pa. July 13, 1995). These claims are, however, dismissed without prejudice, and Plaintiffs are granted until January 25, 2002 to file an amended complaint that alleges with appropriate particularity the involvement of

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[10](...continued)
therefore, continued to apply more searching pleading requirements for actions against government officials in their individual capacities. See Sheldon H. Nahmod, Civil Rights and Civil Liberties Litigation: The Law of Section 1983, § 1:43 (4th Ed. 2000) (noting continued practice of requiring heightened pleading in qualified immunity cases). Because the Third Circuit has not directly spoken on this issue, the pre-Leatherman standard enunciated by the Third Circuit in Rode will be applied here.

the individual defendants in the alleged violations.

An appropriate Order follows.

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CIVIL ACTION

NO. 99-5255

ORDER

AND NOW, this 10th day of December, 2001, upon consideration of Defendants' Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted According to Federal Rule of Civil Procedure 12(b)(6) (Docket #3), Plaintiffs' response thereto (Docket #8), and Plaintiffs' Letter of October 9, 2001 in response to questions posed by the Court (Docket #14), IT IS HEREBY ORDERED that said Motion is DENIED IN PART and GRANTED IN PART for the reasons given in a memorandum of today's date.

The Motion is GRANTED insofar as it seeks dismissal of the individual defendants in their individual capacities. However, Plaintiffs shall have until January 25, 2002 to file an amended complaint that, in accordance with today's memorandum,

states a valid claim against the individual defendants in their individual capacities. In all other respects, the **Motion** is **DENIED.**

BY THE **COURT:**

Mary A. McLaughlin

MARY A. McLAUGHLIN, J.